CONSTITUTIONAL IMPLICATIONS IN SELF-REPRESENTATION

Caroline Johnson Levine*

The Constitution of the State of Florida is a remarkable document, which contains the keys to every part of the law that will be relied upon by Florida’s citizens several times in the course of their lives. It is reminiscent of a sturdy oak tree, from which all of the legislatively enacted branches and leaves extend from. A curious component of Florida’s constitutional text is the ease in which the constitution can be amended. In fact, the entire document has been revised several times, with the latest version officially enacted on November 5, 1968.¹

As certainly as a gardener prunes ineffective branches and sweeps away dead leaves, voters in Florida have become very familiar with the ease with which the Florida Constitution can be amended, as they are faced with several new amendments to ratify every two years.² Florida’s constitutional provisions allowing the process of freely enacting amendments may be borne of the amendment process provided for in the U.S. Constitution.³

* Caroline Johnson Levine is a professor of Florida Constitutional Law at Western Michigan University Cooley Law School. She is an appointed member of the Editorial Board for the Federal Bar Association’s Federal Lawyer magazine and the Chair of the Federal Bar Association’s State and Local Government Section. She is also the Chair of The Florida Bar’s Professionalism Committee. J. D., Florida State University, 1999.

¹ Fla. Const. note ("The Constitution of the State of Florida as revised in 1968 consisted of certain revised articles as proposed by three joint resolutions which were adopted during the special session of June 24–July 3, 1968, and ratified by the electorate on November 5, 1968, together with one article carried forward from the Constitution of 1885, as amended."); see also Fla. Const. art. XII, § 1 ("Articles I through IV, VII, and IX through XX of the Constitution of Florida adopted in 1885, as amended from time to time, are superseded by this revision except those sections expressly retained and made a part of this revision by reference.").


³ U.S. Const. art. V ("The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by
However, it is much easier to amend Florida's Constitution, as there are five available methods of amendment. It naturally follows that state constitutions take some direction and inspiration from the U.S. Constitution. Further, it is interesting to determine how each individual state addresses its presumed directives from the U.S. Constitution. This is illustrated in the many criminal laws and case decisions that attempt to address a never ending litany of criminal activity and seemingly novel facts and circumstances. The Sixth Amendment of the U.S. Constitution provides that individuals, who are arrested by law enforcement officers, may receive the assistance of a defense attorney in order to provide a legal defense to formal criminal charges. The Florida Constitution mirrors this requirement; however, it specifies additional matters that must be addressed in criminal cases.

Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

4 Fla. Const. art. XI provides that Florida's Constitution can be amended by 1. a joint resolution proposed by three-fifths of both houses of the Legislature; 2. proposals provided by a thirty-seven member Constitutional Revision Commission; 3. a citizen's initiative "signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen"; 4. a citizen call for a Constitutional Convention intended to revise the entire constitution "signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to fifteen per cent of the votes cast in each such district respectively and in the state as a whole in the last preceding election of presidential electors"; and 5. a Taxation and Budget Reform Commission. Fla. Const. art. XI, §§ 1–4, 6.

5 See U.S. Const. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

6 U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.").

7 Fla. Const. art. I, § 16 ("In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.").
It is important to note, that a criminal defendant may waive his right to a defense attorney’s legal assistance. This waiver of legal assistance is occasionally motivated by a defendant’s desire to retain control over the trial proceedings. A defendant’s dismissal of a court-appointed attorney can be critical in the development of his case, as a defendant who chooses to utilize the services of a defense attorney, relinquishes a great deal of control in his criminal case. In McKenzie v. State, the Florida Supreme Court addressed many of the issues created by a defendant who chooses to represent himself in criminal proceedings.

On October 4, 2006, Norman Blake McKenzie drove to Randy Peacock and Charles Johnston’s residence in order “to borrow money from Johnston because of [McKenzie’s] drug addiction.” On this particular occasion, McKenzie asked Johnston for a hammer in order to fix McKenzie’s vehicle and Johnston provided McKenzie with a hatchet. Johnston’s neighbors believed that he was a kind-hearted person who would always extend a helping hand to others. One such neighbor, Kathy Nickoloff, shared that Johnston “would bring [friends] in and try to rehabilitate them and help them out, and he paid them.” McKenzie used the hatchet to strike Johnston twice in the head and also to strike Peacock twice in the head. “McKenzie returned to the shed, and when he observed that Johnston was still alive, he struck Johnston one or more times with the hatchet” and stole Johnston’s wallet from his pants. Further, “McKenzie observed that Peacock was struggling to stand up, so he grabbed a knife and stabbed Peacock multiple times” and took Peacock’s wallet and motor vehicle.

Peacock’s co-workers went to Peacock’s residence, because he failed to report to work, and upon their arrival, the co-workers discovered a gruesome and bloody crime scene. A law enforcement
investigation resulted in McKenzie being subsequently identified in a photo lineup by the victim’s neighbor.\textsuperscript{21} Further, “[d]eputies observed a gold sport utility vehicle in the driveway and determined that it was registered to Norman Blake McKenzie.”\textsuperscript{22}

McKenzie was arrested after leading law enforcement officers “on a chase Thursday afternoon through four counties leaving a trail of stolen and carjacked vehicles.”\textsuperscript{23} As part of the several-county crime spree, “McKenzie forced Karen Coffey, 52, from her southwest Gainesville home on Sept. 28 and then drove her around Alachua County for about three hours before leaving her in woods in Putnam County.”\textsuperscript{24} Coffey was an elementary school teacher who was home alone when McKenzie entered her residence with a gun.\textsuperscript{25} After McKenzie’s apprehension, he provided a confession and voluntarily turned over Randy Peacock’s wallet to law enforcement officers, stating, “You’re probably going to need this.”\textsuperscript{26} Additionally, “McKenzie agreed to speak with [the county sheriff’s office] deputies on two separate occasions during which he confessed to the murders of Peacock and Johnston.”\textsuperscript{27}

\begin{footnotes}
\footnoteref{21} Id.
\footnoteref{22} Id.
\footnoteref{24} Id.
\footnoteref{25} Id.
\footnoteref{26} Ex-Con Caught After Chase Charged in 2 Murders, supra note 15 (internal quotation marks omitted).
\footnoteref{27} McKenzie, 29 So.3d at 275. McKenzie’s discussion with law enforcement, during which he confessed to two murders, implicates federal and state constitutional provisions. See generally U.S. CONST. amend IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized, shall be executed, and no Warrant shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized, and the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.”); Miranda v.
\end{footnotes}
Subsequent to McKenzie's arrest, a grand jury indicted him “on two counts of first-degree murder for the homicides of Randy Wayne Peacock and Charles Frank Johnston.”28 As McKenzie’s criminal case proceeded through the trial court, McKenzie became frustrated with his court-appointed counsel and requested that he be allowed to represent himself in his murder trial.29 McKenzie’s motivation to dismiss his attorney and represent himself was based upon his desire to expedite his criminal trial and sentencing hearing.30 McKenzie argued to the court “that he did not need the assistance of counsel,”31 and the court conducted a Faretta hearing32 and determined that McKenzie “was competent to waive counsel and that his waiver was knowing, intelligent, and voluntary.”33 However, the court determined that “standby” counsel should be appointed to be present during the trial proceedings and be prepared to present a legal defense if McKenzie changed his mind and determined that he would prefer to utilize a defense attorney in preparing and presenting his defense.34

McKenzie made an opening statement to the jury, where he admitted to his premeditated intention to rob Johnston and Peacock

Arizona, 384 U.S. 436, 444 (1966) (“As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.”).

28 McKenzie v. State, 29 So. 3d at 275.
29 See id. at 870–71 (“McKenzie expressed frustration with his court-appointed counsel because his right to a speedy trial had been waived without first consulting with him. When defense counsel sought a continuance on the basis that more time was needed to prepare for trial, McKenzie objected. McKenzie insisted that he was ready and wanted to proceed as expeditiously as possible.”).
30 Id. at 871.
31 Faretta v. California, 422 U.S. 806, 807 (1975) (“The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. . . . The question before us now is . . . whether a State may constitutionally hale a person into its criminal courts and there force a lawyer upon him, even when he insists that he wants to conduct his own defense. It is not an easy question, but we have concluded that a State may not constitutionally do so.”; see also Fla. Const. art. I, § 2 (“All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.”)).
32 McKenzie, 153 So. 3d at 871.
33 McKenzie v. State, 29 So. 3d 272, 277, 283 (Fla. 2010).
and that he subsequently killed them. Prosecutors presented an evidentiary case against McKenzie; however, McKenzie chose not to present a defense case. McKenzie stated that he would not offer any witness testimony and further declined to testify on his own behalf. At the conclusion of the trial, McKenzie gave a four minute closing argument, which included the admission that “[t]here is no doubt that a heinous crime has occurred. I’m the one that is responsible for it.” A twelve member jury deliberated as to McKenzie’s guilt for an hour and a half, before returning a guilty verdict.

Upon hearing the jury’s verdict, McKenzie requested the assistance of a defense attorney for the sentencing phase of the trial and the court appointed counsel. However, one day later, McKenzie requested to have his defense attorney dismissed so that McKenzie could represent himself in the Spencer hearing, which

35. See McKenzie, 153 So. 3d 880–81. McKenzie told the jury:

I struck Charles Johnston one time in the back of the head with the . . . flat part of the hatchet, not the blade side, probably about right there. He fell down, knocking down a lot of the shelves . . . .

. . . .

I walked into the front door. Randy Peacock was standing in the kitchen, cooking a pot of chicken soup. And I walked up behind him and I struck him one time in the top, the back of his head, once again . . . with the flat part of the hatchet. Basically about the same spot that I hit Charles Johnston at . . . .

. . . .

He fell forward, on both elbows, about like that, directly into the pot of chicken soup, with the soup still maintaining where it was being cooked at on the stove. He didn’t fall over, but he was knocked out. And he didn’t cry out in pain. He was knocked out. And . . . I was puzzled why he wouldn’t fall, and then I realized that he was balanced perfectly there, knocked out, leaning with his arms in the pot.

Id.

36. See id. at 871–72.

37. Id. at 871; see also Fla. Const. art. I, § 9 (“No person shall be . . . compelled in any criminal matter to be a witness against oneself.”).


39. Id.

40. McKenzie v. State, 29 So. 3d 272, 277 (Fla. 2010).

41. See also McKenzie, 153 So. 3d 880–81 (McKenzie told the jury: “I struck Charles Johnston one time in the back of the head with the . . . flat part of the hatchet, not the blade side, probably about right there. He fell down, knocking down a lot of the shelves . . . .”)).

42. Spencer v. State, 615 So. 2d 688, 690–91 (Fla. 1993) (“We contemplated that the following procedure be used in sentencing phase proceedings. First, the trial judge should hold a hearing to: a) give the defendant, his counsel, and the State, an opportunity to be heard; b) afford, if appropriate, both the State and the defendant an opportunity to present additional evidence; c) allow both sides to comment on or rebut information in any presentence or medical report; and d) afford the defendant an opportunity to be heard in person. Second, after hearing the evidence and argument, the trial judge should then recess the proceeding to consider the appropriate sentence. If the judge determines that the death sentence should be imposed, then, in accordance with section 921.141, Florida Statutes . . . .”)
would determine whether he would be sentenced to death. During the *Spencer* hearing, regarding whether McKenzie should be sentenced to death, often referred to as the penalty phase, McKenzie revealed that he had “most recently finished a fifteen-year prison sentence for a strongarm robbery,” which resulted in the victim’s quadriplegic paralysis and McKenzie asserted that he had “spent 21 of his 43 years in prison.” Subsequently, the same jury deliberated for a little over one hour and determined that McKenzie should be sentenced to death. The trial court determined “that it could not afford the jury’s advisory recommendation [of death] great weight in light of McKenzie’s minimal presentation of mitigation during the penalty phase.” However, the court conducted an independent evaluation of the evidence presented during the trial and sentencing hearings, “concluded that the aggravating circumstances established far outweighed the mitigating circumstances,” and sentenced McKenzie to death for the murders

(1983), the judge must set forth in writing the reasons for imposing the death sentence. Third, the trial judge should set a hearing to impose the sentence and contemporaneously file the sentencing order.”).  

43. *McKenzie*, 29 So. 3d at 277–78.

44. Prior, *supra* note 38.

45. *McKenzie*, 29 So. 3d at 277 (“During the penalty phase, [a county sheriff’s office] deputy testified that when McKenzie spoke to law enforcement he stated that he went to the victims’ residence with the intent to kill Peacock and Johnston for their money. The State introduced eight prior convictions for the following crimes: burglary while armed with a firearm and with an assault or battery; kidnapping with a firearm; strong-arm robbery; attempted robbery with a firearm; robbery with a firearm (three separate convictions); and carjacking. Finally, victim impact statements written by Charles Johnston’s daughter and Randy Peacock’s sister were read to the jury. After the State rested its case, McKenzie advised that he would not offer any mitigation evidence to the jury. However, following the prosecutor’s closing statement, McKenzie was allowed to place bank records into evidence for the purpose of demonstrating his financial behavior in the months before these crimes. By a vote of ten to two, the jury recommended that a sentence of death be imposed for each murder.”); Prior, *supra* note 38.

The Florida Constitution authorizes the death penalty in Florida:

Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

**FLA. CONST. art. I, § 17.**

of Peacock and Johnston. 47

McKenzie “appeal[ed] his convictions for first-degree murder and his sentences of death.” 48 The Florida Supreme Court found that the Florida Constitution provided the court with jurisdiction to address this death penalty case. 49 The Florida Constitution provides that a limited amount of cases litigated in lower courts, are eligible for Florida Supreme Court review. 50 Five categories of Supreme Court jurisdiction exist, and include: (1) mandatory appellate jurisdiction; (2) discretionary review jurisdiction; (3) discretionary original jurisdiction; (4) exclusive jurisdiction; and (5) advisory opinions. 51 “Mandatory appellate” jurisdiction is limited to death penalty appeals, validation of public revenue bonds, Florida Public Service Commission decisions, and District Court of Appeal declarations invalidating a state statute or constitutional provision. 52

McKenzie argued that “the trial court impermissibly permitted McKenzie to represent himself in violation of the Sixth Amendment” when McKenzie had no legal training and could not effectively put on a legally sufficient defense. 53 However, the Florida Supreme Court noted that in Faretta, the U.S. Supreme Court “indicated that neither legal knowledge nor legal skills are required as conditions precedent for a defendant to exercise the right to self-representation.” 54 The Florida Supreme Court affirmed

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47 McKenzie, 29 So. 3d at 278 (“In pronouncing McKenzie's sentences, the trial court determined that the State had proven beyond a reasonable doubt the existence of four statutory aggravating circumstances: (1) McKenzie had previously been convicted of another capital felony or of a felony involving the use or threat of violence to the person . . . (eight prior convictions and the contemporaneous murder of the other victim) (great weight); (2) the murders were committed while McKenzie was engaged in the commission of a robbery . . . (significant weight); (3) the murders were committed for pecuniary gain . . . (merged with robbery aggravator—no additional weight given); and (4) the murders were cold, calculated, and premeditated (CCP) . . . (great weight).”).
48 Id. at 275.
49 Id. (citing FLA. CONST. art. V, § 3(b)(1)). Article V, section 3(b)(1) of the Florida Constitution states that the Supreme Court “[s]hall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.” FLA. CONST. art. V, § 3(b)(1).
50 FLA. CONST. art. V, § 3(b).
51 Id.
52 See Trepal v. State, 754 So. 2d 702, 707 (Fla. 2000) (“[I]n addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases.” (quoting State v. Matute-Chirinos, 713 So. 2d 1006, 1008 (Fla. 1998))).
53 McKenzie, 29 So. 3d at 280.
54 Id. at 281 (“Regardless of the defendant’s legal skills or the complexity of the case, the court shall not deny a defendant’s unequivocal request to represent himself or herself, if the court makes a determination of record that the defendant has made a knowing and intelligent
McKenzie's convictions and sentences, based upon the sufficiency of the evidence, and the U.S. Supreme Court subsequently denied certiorari review.

McKenzie filed a motion to vacate judgment of conviction and sentence in the trial court, approximately four years after his murder convictions and death sentence. After conducting a hearing on McKenzie's motion, the trial court determined that "McKenzie failed to demonstrate prejudice; such as the reasonable probability that, but for counsel's error, the result in the case would have been different." The judge who presided over the murder trial found that McKenzie voluntarily represented himself and therefore, accepted the consequences of his self-representation.

McKenzie also claimed he was denied meaningful access to the court because he was not given access to a law library. However, the court referred to court transcripts to support a ruling that McKenzie's claim in this area fails as well because McKenzie was "informed of the limited access he would have to legal materials when the defendant chose to waive his right to assistance of competent counsel."

McKenzie appealed the denial of his motion to vacate judgment of conviction and sentence and petitioned for a writ of habeas corpus to the Florida Supreme Court. McKenzie also made an ineffective waiver of the right to counsel.” (quoting Fla. R. CRIM. P. 3.111(d)(3)); see also Amendment to Fla. Rule of Criminal Procedure 3.111(d)(2)–(3), 719 So. 2d 873, 875 (Fla. 1998) (quoting the same language).

55 McKenzie, 29 So.3d at 278 ("As a preliminary matter, even if a defendant has not presented a sufficiency challenge, this Court has an independent obligation to review the record to determine whether sufficient evidence exists to support each conviction. We conclude that abundant record evidence supports the convictions for the murders of Peacock and Johnston. In fact, McKenzie has consistently admitted that he murdered the victims."); see also Overton v. State, 801 So. 2d 877, 905 (Fla. 2001) (stating the court's obligation to review the record); Fla. R. APP. P. 9.142(a)(5) ("Whether or not insufficiency of the evidence or proportionality is an issue presented for review, the court shall review these issues . . . ").


58 Id.; see Everett v. State, 54 So. 3d 464, 485 (Fla. 2010) ("To uphold the trial court's summary denial of claims raised in an initial postconviction motion, the record must conclusively demonstrate that the defendant is not entitled to relief." (quoting Hutchinson v. State, 17 So. 3d 696, 700 (Fla. 2009)).

59 St. Augustine Murderer Headed Back to Death Row, supra note 57; see also Fla. CONST. art. I, § 21 ("The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."); Fla. CONST. art. I, § 22 ("The right of trial by jury shall be secure to all and remain inviolate.").

60 St. Augustine Murderer Headed Back to Death Row, supra note 57.

61 McKenzie v. State, 153 So. 3d 867, 869 (Fla. 2014); see also Fla. CONST. art. I, § 13 ("The
assistance of counsel claim, by arguing that “prior to their discharge, appointed counsel were deficient because they failed to meet with him at one of the various locations where he was being held in custody to discuss the waiver of speedy trial and the capital sentencing process.”

The U.S Supreme Court has consistently indicated that an attorney representing a criminal defendant is empowered to determine whether it would be the best legal strategy to delay a case and waive speedy trial on behalf of a defendant. Importantly, the Florida Supreme Court has determined “that there is no constitutional right for hybrid representation at trial” and a criminal defendant cannot act as legal co-counsel in his case.

writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.”

See Taylor v. Illinois, 484 U.S. 400, 418 (1988) (“[T]he lawyer has—and must have—full authority to manage the conduct of the trial. The adversary process could not function effectively if every tactical decision required client approval.”); Wainwright v. Sykes, 433 U.S. 72, 93 n.1 (1977) (Burger, C.J., concurring) (“Only such basic decisions as whether to plead guilty, waive a jury, or testify in one’s own behalf are ultimately for the accused to make.”); Faretta v. California, 422 U.S. 806, 820 (1975) (“It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy . . . .”); Burke, 257 F.3d at 1323 (“Defense counsel in a criminal trial is more than an adviser to a client with the client having the final say at each point. He is an officer of the court and a professional advocate pursuing a result—almost always, acquittal—within the confines of the law; his chief reason for being present is to exercise his professional judgment to decide tactics . . . . When the defendant is given the last word about how his case will be tried, the defendant becomes his own trial lawyer. If we add to the list of circumstances in which a defendant can trump his counsel’s decision, the adversarial system becomes less effective as the opinions of lay persons are substituted for the judgment of legally trained counsel. The sound functioning of the adversarial system is critical to the American system of criminal justice. We intend to defend it.”); see also U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”); FLA. CONST. art. I, § 16(a) (“In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed.”).

See Puglisi v. State, 112 So. 3d 1196, 1206–07 (Fla. 2013); see also Sheppard v. State, 17 So. 3d 275, 279 (Fla. 2009) (stating that a defendant does not have a right to represent himself and be represented by counsel); cf. Wainwright, 433 U.S. at 93 (Burger, C.J., concurring) (“Once counsel is appointed, the day-to-day conduct of the defense rests with the attorney. He, not the client, has the immediate—and ultimate—responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop. Not only do these decisions rest with the attorney, but such decisions must as a practical matter, be made without consulting the client. The trial process simply does not permit the type of frequent
Additionally, the Florida Supreme Court has consistently held that the remedy for a defendant who believes he received inadequate representation from his attorney is to file an ineffective assistance of counsel claim, which may result in a new trial with a new defense attorney. 67

“McKenzie [also] contend[ed] that the trial court restricted his access to standby counsel in violation of the Sixth, Eighth, and Fourteenth Amendments.” 68 However, McKenzie failed to object to this and many other issues in the trial court, thereby failing to preserve alleged errors for appellate review. 69 More significantly, McKenzie would not be entitled to relief for his complaint regarding the insufficient performance of standby counsel. 70 This is clear because McKenzie was very “active [in the trial] and raised his own objections during the discussion of the penalty-phase jury instructions.” 71 Accordingly, to hold that the trial court committed error regarding the appointment limitations of standby counsel, “would erode the Faretta right to self-representation because it would allow standby counsel ‘to speak instead of the defendant on . . . matters of importance,’ regardless of the wishes of a defendant.” 72

McKenzie petitioned for a writ of habeas corpus in tandem with his motion to vacate judgment of conviction and sentence. 73 The only issue raised in the habeas petition was McKenzie’s claim “that because he is mentally ill,” it is unconstitutional to execute him. 74 However, the Florida Supreme Court has “previously held that mental illness alone does not operate as an absolute bar to execution.” 75

and protracted interruptions which would be necessary if it were required that clients give knowing and intelligent approval to each of the myriad tactical decisions as a trial proceeds.” (emphasis added). See generally, Caroline Johnson Levine, Balancing the Sixth Amendment on the Scales of Justice: Is the Lawyer or the Client in Control of the Proceedings?, 77 ALR. L. REV. 1455 (2013/2014) (discussing Puglisi).

67 Puglisi, 112 So. 3d at 1209 (Pariente, J., concurring) (“Rather, the failure of defense counsel to call witnesses requested by the defendant should be evaluated in a postconviction setting regarding whether the defense counsel made a reasonable strategic determination, after examining all applicable considerations.”); see also Fla. R. CRIM. P. 3.850 (describing the rules for motions to vacate, set aside, or correct a sentence).
68 McKenzie v. State, 29 So. 3d 272, 283 (Fla. 2010).
69 Id. (citing Perez v. State, 919 So. 2d 347, 359 (Fla. 2005)).
70 McKenzie, 29 So. 3d at 283–85 (citing McKaskle v. Wiggins, 465 U.S. 169, 177–78 (1984)).
71 McKenzie, 29 So. 3d at 284.
72 Id. at 285 (quoting McKaskle, 465 U.S. at 178).
73 McKenzie v. State, 153 So. 3d 867, 869 (Fla. 2014).
74 See id. at 884.
75 Id. (citing Power v. State, 992 So. 2d 218, 222 (Fla. 2008)).
The Florida Constitution provides a myriad of rights for its citizens. However, it is not always apparent to a nonlawyer what exactly the constitution or Florida statutes provide or require, in order to fully exercise an individual's rights, without the assistance of a lawyer. McKenzie had access to a court appointed attorney, and even with a looming death penalty sentence, he refused to provide an adequate legal defense for himself by engaging in self-representation. Therefore, it could be argued that McKenzie, or any self-representing criminal defendant, should certainly become familiar with the Florida Constitution.